Supreme Court, U.S.
FILED

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NO.

In The
Supreme Court of the United States

DWAYNE BELAIRE; JOHN BELCHER; WADE BONDS; BOBBY W. BUTLER; CLARENCE E. CANNON, ET AL
Petitioners

VERSUS

BURLINGTON RESOURCES, INC., BURLINGTON RESOURCES, INC. DISCRETIONARY SEVERANCE BENEFIT PLAN
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Fifth Circuit err in holding that an employer can take action other than plan amendment, to prevent employees' attainment of eligibility for ERISA severance benefits, if the action serves a legitimate business interest of the employer.

2. Did the Fifth Circuit err in holding an employer has no ERISA fiduciary duty to disclose an arrangement with a successor employer that is designed to prevent participants from becoming eligible for severance plan benefits.

3. Does an employer's arrangement for a successor to change its pay plan in order to deprive participants of eligibility for severance benefits violate ERISA's prohibition against interference.

PARTIES TO THE PROCEEDING

Petitioners are:

Ricky Anderson
Dwayne J. Belaire
John Belcher
Wade Bonds
M. David Broussard
Bobby W. Butler
Frank Cali, Jr.
Clarence E. Cannon
Ricky Clark
Steve Courville
Lester Dufour
Wayne Duhon
Whitney L. Duplantis
Alan Garza
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Eldon Hansen
Timothy M. Harris
Jayson Hebert
Darron Hodge
Eric Lanza
Michael Lavan
Michael Lirette
Kurt Lirette
Jimmy Marcel
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James Mason
Robert P. Mayer, Jr.
Walter McDougle
Leland Meche
Michael Neveu
Rodney Prince
Boyd Raborn, Jr.
Doug Renard
Craig Rhodes
Frederick W. Richard
James Saddler
Hayward Sedotal
Ralph Segura
James Smith
Bryon Tauzin
Dannie Vincent
Jerry Williams
Mark Wilson
Allen York

Respondents are:

Burlington Resources, Inc.,
Burlington Resources, Inc. Discretionary
Severance Benefit Plan

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OPINIONS BELOW

Citations of official and unofficial reports of the opinions and orders and orders entered in to case.

The opinions of the District Court and the Fifth Circuit Court of Appeal were not issued for publication.

STATEMENT OF JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C.A. §1254. This is a petition for writ of certiorari to review a judgment of the United States Court of Appeal for the Fifth Circuit rendered February 23, 2005. Applicants filed a petition for rehearing with respect to the judgment sought to be reviewed on March 9, 2005. The Fifth Circuit denied the petition for rehearing and rehearing *en banc* on March 24, 2005. This petition for certiorari was filed within 90 days of the denial of rehearing.

STATUTORY PROVISIONS INVOLVED

Statement of Authorities

a. 29 USCA §1140:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C.A. § 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against

any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.

b. 29 USCA §1133:

In accordance with regulations of the Secretary, every employee benefit plan shall (1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and (2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

c. 29 USCA §1104(a)(1):

Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and (A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan;

STATEMENT OF THE CASE

1. Overview of the Case

The Fifth Circuit panel held that an employer can take action (other than plan amendment) to prevent employees' attainment of eligibility for ERISA severance benefits, if the payment of severance

benefits provided a disincentive for employee retention and business continuity.

The Fifth Circuit decision directly conflicts with the Court's holding in Intermodal Rail Employees Assn. v. Atchinson, Topeka & Santa Fe Ry., 520 U.S. 510 (1997) on an important question of federal law. An employer's arrangement for a successor to change its pay plan in order to deprive participants of eligibility for severance benefits violate ERISA's prohibition against interference. The power to amend or abolish a welfare benefit plan does not include the power to take any other action for the purpose of interfering with the attainment of rights under the plan.

2. Background.

This is claim for ERISA plan benefits and statutory penalties. Appellants are former employees of Burlington Resources, Inc. (BRI) who were wrongfully deprived of severance pay under the BRI Discretionary Severance Benefit ("DSB") Plan following a permanent layoff in February 2000.

BRI officials manipulated a successor employer's pay plan on two separate occasions in order to prevent the employees' attainment of eligibility for severance benefits under the DSB Plan. BRI's stated motive was to deprive the employees of the economic benefit that severance pay would have afforded, so they would be unable to take time off and look for work elsewhere. The admitted object was to put economic pressure on the employees to return to work on BRI's platforms for the outsourcing company at reduced pay and benefits.

BRI officials told participants they had to interview with the successor in order to be eligible for severance benefits. Those officials knew and failed to disclose to participants that Burlington had arranged for the successor to change its pay plan so that those who were offered jobs would not be eligible for severance pay. The object was to use the pretense of eligibility for severance benefits to induce the employees to remain on the job during the outsourcing. BRI misled the employees

about the security of their benefits, breached fiduciary duties of complete and truthful disclosure, and misused the Plan in order to further BRI's interest in an outsourcing scheme, in violation of ERISA §404[1].

The plan administrator denied the Applicants' claims for severance benefits, stating the participants were not eligible for benefits because they had received a "comparable job offer" from the outsourcing company. The administrator, who was privy to the arrangement with the successor employer to prevent the attainment of eligibility for severance benefits, told the participants BRI had no plan to to prevent the attainment of eligibility for severance benefits,

Applicants appealed to the Benefits Review Committee, which also denied the claims.

Applicants filed a civil action in the U.S. District Court for the Western District of Louisiana for interference with eligibility and breaches of fiduciary duty, and for penalties for disclosure violations.

3. Proceedings Below

The district court dismissed the interference claim on finding that the employees did not have an "entitlement" under the plan. The court dismissed breach of fiduciary claims involving BRI's personnel director and operations manager on finding the statements the benefits statements were not deceptive. The court concluded the plan administrator did not breach a fiduciary duty of truthful disclosure because he was acting in his capacity as an officer of the company and not as an ERISA fiduciary.

On appeal, the Fifth Circuit held that the employer's business interest to keep employees on board and to avoid an interruption in business activities during the outsourcing justified BRI's actions to

[1] 29 U.S.C. §1104

prevent the employees' attainment of eligibility for ERISA severance benefits.

WHY THE WRIT SHOULD BE GRANTED

The Fifth Circuit decision directly conflicts with the Court's holding in Intermodal Rail Employees Assn. v. Atchinson, Topeka & Santa Fe Ry., 520 U.S. 510 (1997) on an important question of federal law. An employer's arrangement for a successor to change its pay plan in order to deprive participants of eligibility for severance benefits violate ERISA's prohibition against interference. The power to amend or abolish a welfare benefit plan does not include the power to take any other action for the purpose of interfering with the attainment of rights under the plan.

The Fifth Circuit also affirmed the district court's conclusion that an employer has no ERISA fiduciary duty to disclose changes in an outsourcing pay plan that are designed to cause severance benefits ineligibility. The decision is in direct conflict with Varity Corp. v. Howe, 516 U.S. at 501, 116 S.Ct. at 1065, (1997) in which this Court held that an employer has a fiduciary duty to disclose material facts when the effect of non-disclosure is to mislead employees about the future of their benefits.

Review is warranted to secure and maintain uniformity of decision, and to avoid confusion or uncertainty with respect to these important ERISA policy concerns:

(i) When does a participant's interest in a prospective ERISA plan benefit become subject to protection against interference, and

(ii) The scope of an ERISA fiduciary's duty of honest disclosure as to the employer's intention to avoid paying benefits.